

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

POLY-AMERICA, L.P., v. API INDUSTRIES, INC.,	Plaintiff, Defendant.	CIVIL ACTION Case No.: 1:21-cv-08195-JSR-BCM
API INDUSTRIES, INC., v. POLY-AMERICA, L.P.,	STATEMENT OF MATERIAL FACTS Counterclaim-Plaintiff, Counterclaim-Defendant.	

In accordance with S.D.N.Y. Local Civil Rule 56.1, and in conjunction with its motion for summary judgment, Defendant Counterclaim Plaintiff API Industries, Inc. (“API”) hereby submits its Statement of Material Facts as to which it submits there is no genuine dispute:

Material Fact No. 1

Poly-America L.P. claims rights in a trademark or trade dress “comprising the color orange as used on the drawstring portion of trash bags.” (Complaint, Dkt. 1, ¶ 9)

Material Fact No. 2

Poly-America L.P. owns Supplemental Registration No. 4,027,254 for its mark, in which the mark is described and illustrated as follows:

The mark consists of the color orange as used on the drawstring portion of the goods. The mark consists of the color orange as applied to the entire surface of the drawstrings. The matter shown in broken lines serves to show positioning of the mark and is not part of the mark.

With orange “claimed as a feature of the mark” for Plastic trash bags, in International Class 16.



(Complaint, Dkt. 1, ¶ 11; Benschar Decl. Exh. A, Supplemental Registration)

Material Fact No. 3

The “Orange Drawstring Mark” (meaning the above mark registered on the Supplemental Register) has not achieved secondary meaning in Commerce. (Poly-America Supplemental Response to Request for Admission No. 1, Benschar Decl. Exh. C; API Request for Admission No. 1 and Definitions 7, 8, and 10, Benschar Decl. Exh. B).

KOFFSKY SCHWALB LLC

Dated: May 20, 2022
New York, New York

By: /s/ Efrem Schwalb
Efrem Schwalb
Tal S. Benschar
500 Seventh Avenue, 8th Floor
New York, New York 10018
Tel.: 646-553-1590
Fax.: 646-553-1591
eschwalb@koffskyschwalb.com
tbenschar@koffskyschwalb.com